

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MELLON D. BRYANT
(CRD No. 4741516),

Respondent.

Disciplinary Proceeding
No. 2006006368001

Hearing Officer-SNB

DEFAULT DECISION

January 28, 2008

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's willful failure to disclose material information on his Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

William Brice La Hue, Esq., FINRA, Atlanta, GA, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On September 7, 2007, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Mellon D. Bryant ("Respondent") willfully violated Rule 2110 and IM-1000-1 by failing to disclose that he had been charged with, and pled guilty to, misdemeanor theft on his Uniform Application for Securities Registration or Transfer ("Form U4"). In addition, the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information. Respondent did not file an Answer to the

Complaint. On November 26, 2007, Enforcement filed a Motion for Entry of Default Decision, supported by the affidavit of William Brice La Hue, Esq., and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On September 7, 2007, Enforcement sent the Complaint and Notice of Complaint to Respondent, by first-class and certified mail, to his last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on October 8, 2007. The Answer was due no later than October 25, 2007. Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

In January 2004, Respondent first became associated with Fidelity Investments Institutional Service Company, ("Fidelity"), a FINRA member firm. Respondent was associated with Fidelity until his termination in August 2006. Respondent has not been associated or registered with a FINRA member since that time.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was an associated person and with

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

failing to comply with requests for information made during the two-year period following termination of his last association, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. False Form U4 Disclosures

The Complaint alleges that Respondent willfully failed to disclose in his initial Form U4 filing with Fidelity in January 2004, that in November 1998 he pled guilty to misdemeanor theft by check. Specifically, Respondent did not disclose the charge or his guilty plea in response to Questions 14B(1)(a) and (b) of the Form U4, which asked whether he had ever been convicted of a misdemeanor involving the wrongful taking of property, or had ever been charged with a misdemeanor involving this offense.

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require." Specifically, applicants must complete a Form U4, disclosing, among other things, whether they have ever pled guilty to a misdemeanor involving the wrongful taking of property.

IM-1000-1 provides: "The filing with [FINRA] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." The accuracy of Form U4 disclosures "is critical to the effectiveness" of a self-regulatory organization's ability to screen and monitor the

professionals within the securities industry.²

The Form U4 questions are clear, and Respondent provided false answers to them. Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent willfully violated Rule 2110 and IM-1000-1.

B. Failure to Respond

The Complaint also alleges that on November 2, 2006, FINRA Staff sent Respondent a request for information by first-class mail to his CRD address concerning the failure to make the Form U4 disclosure charged in the first cause of the Complaint. FINRA Staff sent this request again, by certified and first class mail, on Dec. 11, 2006. FINRA Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.³ Here, although Respondent received valid constructive notice of FINRA Staff's request,⁴ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

² Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also, Daniel Richard Howard, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) ("The candor and forthrightness of applicants is critical to the effectiveness of this screening process."). Dep't. of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Discip. LEXIS 8 at * 32 (N.A.C. May 13, 2004), aff'd, Exch. Act Rel. No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), aff'd without opinion, 179 Fed Appx. 702, 2006 U.S. Appx. LEXIS 24875 (D.C. Cir. 2006).

³ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁴ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

For filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension of five to 30 business days, or in egregious cases, such as those involving repeated inaccurate filings or a failure to disclose matters which would create a statutory disqualification, a longer suspension or a bar. Guidelines at p. 73-74. Enforcement requests a bar. There is insufficient information in the record to determine the precise conduct underlying Respondent's theft by check guilty plea. Given this, and because Respondent's conduct involved a small amount (the aggregate payment for court costs and restitution was \$473.05), and was limited to one incident, the record does not support a bar. However, Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact which is required to be stated" in that application is statutorily disqualified from participating in the securities industry. Article III, Section 4(f) of FINRA's By-Laws gives effect to this by providing that a person is subject to a "disqualification" if such person "has willfully made or caused to be made in any application ... to become associated with a member ... any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in such application ... any material fact which is required to be stated therein." Because the Form U4 that Respondent submitted clearly required disclosure of the misdemeanor charge and guilty plea, the Hearing

Officer finds that Respondent's failure to disclose them was willful. Accordingly, Respondent is subject to statutory disqualification.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's willful failure to disclose material information on his Form U4, in violation of Rule 2110 and IM-1000-1. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Mellon D. Bryant (via FedEx and first-class mail)
William Brice La Hue, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

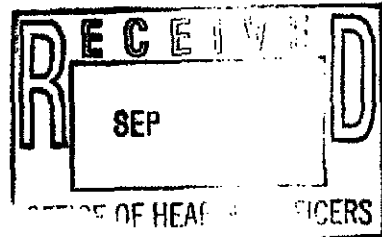
v.

MELLON D. BRYANT,
(CRD No. 4741516)

Respondent.

Disciplinary Proceeding
No. 2006006368001

COMPLAINT



The Department of Enforcement alleges:

RESPONDENT

1. Mellon D. Bryant ("Bryant") entered the securities industry in March 2003, when he was employed by Fidelity Investments Institutional Services Company ("Fidelity"). He was registered as an investment company and variable contracts products representative with the FINRA (f/k/a NASD) in June 2004. Bryant was employed by Fidelity until August 2006. He is not currently employed by a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

SUMMARY

2. In January 2004, Bryant submitted a Uniform Application for Securities Industry Registration ("Form U4") application for registration with FINRA that failed to disclose that in 1998 he had been charged with a misdemeanor for theft by check and that he had pled guilty to the misdemeanor charge. In addition, Bryant failed to respond to requests, issued pursuant to NASD Procedural Rule 8210, to provide information to FINRA staff in connection with its investigation of his inaccurate Form U4.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110 and IM-1000-1

(Failure to Disclose a Reportable Event on Form U4)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. In 1998, Bryant was charged with a misdemeanor in Tarrant County, Texas for theft by check. In or about November 1998, Bryant pled guilty to the misdemeanor charge for theft by check and was placed on a 12-month deferred adjudication program and ordered to pay monthly payments for the court costs and restitution in the aggregate amount of \$473.05.
5. In or about September 1999, Bryant had an active warrant issued for failing to pay the restitution and fines that were ordered as a result of the 1998 misdemeanor plea agreement.
6. On or about January 21, 2004, Bryant completed and signed a U4 application for registration with FINRA and submitted it to Fidelity.
7. The January 21, 2004, Form U4 indicates that Bryant answered "No" to questions 14B(1)(a) and 14B(1)(b).
8. Question 14B(1)(a) on the Form U4 asks if the applicant has ever "been convicted of or pled guilty ... to a misdemeanor involving: ... wrongful taking of property"
9. Question 14B(1)(b) on the Form U4, asks if the applicant has ever "been charged with a misdemeanor specified in 14B(1)(a)?"
10. Bryant willfully failed to disclose to Fidelity the material facts that he had been charged with a specified misdemeanor, and that he had pled guilty to a specified misdemeanor, when he answered "No" to questions 14B(1)(a) and 14B(1)(b) on the Form U4.
11. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent Bryant.

SECOND CAUSE OF ACTION

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure to Respond to FINRA Requests for Information)

12. The Department realleges and incorporates by reference paragraphs 1 through 11, above.
13. On or about September 7, 2006, the FINRA Atlanta District office initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Fidelity regarding Bryant. The Form U5 indicates that Bryant failed to disclose a misdemeanor on his Form U4.
14. By letter dated November 2, 2006, sent via first class mail to Bryant at his CRD residential address in Fort Worth, Texas, Bryant was requested, pursuant to NASD Procedural Rule 8210, to provide a written statement and any applicable court documents regarding the allegations disclosed on his Form U5. The November 2, 2006, letter set a deadline of November 23, 2006, for the submission of the requested written statement. The November 2, 2006, letter was not returned. Bryant did not respond by the November 23, 2006 deadline.
15. By letter dated December 11, 2006, sent via first class and certified mail to Bryant at his CRD address, Bryant was again requested, pursuant to NASD Procedural Rule 8210, to provide a written statement and any applicable court documents regarding the allegations disclosed on his Form U-5. The December 11, 2006, letter set a deadline of December 26, 2006, for the response.
16. The December 11, 2006, letter sent by first class mail was not returned. The copy of the December 11, 2006 letter sent by certified mail was returned indicating that it was "unclaimed." Bryant did not respond by the December 26, 2006 deadline.
17. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Bryant.

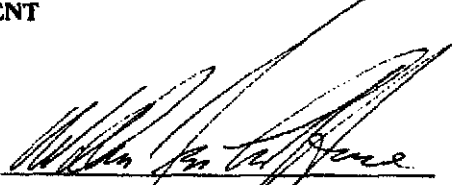
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.
- B. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.
- C. Make specific findings that Respondent's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 9/7/07


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